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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



**DOCKET NO. AB-55 (Sub-No. 659X)**

**CSX TRANSPORTATION, INC.-ABANDONMENT EXEMPTION-IN  
ALLEGANY COUNTY, MD**

**EIGHTEEN THIRTY GROUP, LLC-PETITION FOR EXEMPTION FROM THE  
PROVISIONS OF 49 U.S.C. §10904(f) (4) (A)**

ENTERED  
Office of Proceedings

OCT 20 2010

Part of  
Public Record

Submitted By:

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Counsel for Petitioner

**ORIGINAL**

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OCT 19 2010

**SURFACE  
TRANSPORTATION BOARD**

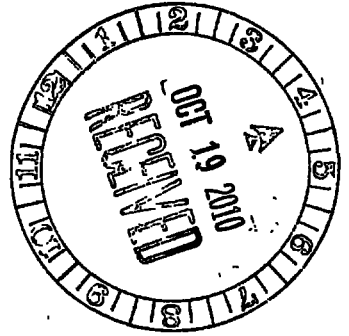
**FILED**

OCT 19 2010

**SURFACE  
TRANSPORTATION BOARD**

Dated: October 19, 2010

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SURFACE TRANSPORTATION BOARD**



**AB-55 (Sub-No. 659X)**

**CSX TRANSPORTATION, INC.-ABANDONMENT EXEMPTION-IN  
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**INTRODUCTION**

Pursuant to 49 U.S.C. §10502, Eighteen Thirty Group, LLC (“Eighteen Thirty”), a Maryland limited liability company and noncarrier, seeks an exemption from the provisions of 49 U.S.C. §10904(f) (4) (A) to enable it to acquire about 8.54 miles of railroad line between Morrison, MD, milepost BAI 27.0, and Carlos, MD at the end of the line, milepost BAI 18.46, all in Allegany County, MD (“the Line”). The Line had previously been acquired under the Offer of Financial Assistance provisions at 49 U.S.C. §10904 and the underlying regulations at 49 CFR 1152.27. Concurrently, Eighteen Thirty is filing a Notice of Exemption under 49 CFR Part 1150, Subpart D-Exempt Transactions with the Board (“the Notice”) to acquire the Line as explained below.<sup>1</sup>

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<sup>1</sup> Eighteen Thirty’s acquisition notice is docketed as STB Finance Docket No. 35438. Also Eighteen Thirty’s corporate affiliate, Georges Creek Railway, LLC (“Georges Creek”), is filing a second Notice of Exemption under 49 CFR Part 1150, Subpart D-Exempt Transactions, to operate the Line. That notice is docketed as STB Finance Docket No. 35437. Finally, Duncan Smith and Gerald Altizer,

Attached as Exhibit A is a letter from CSX Transportation, Inc. ("CSXT"), the original owner of the Line, stating that CSXT will not reacquire the Line and that it waives its rights under the statute.

### STATEMENT OF FACTS

As explained in the accompanying Notice, Eighteen Thirty is a newly established limited liability company organized under Maryland law for the purpose of owning and operating railroad lines. Eighteen Thirty was recently formed by Duncan Smith and Gerald Altizer to acquire the Line.

CSXT obtained authority to abandon the Line. *CSX Transportation, Inc.-Abandonment Exemption-in Allegany County, MD*, STB Docket No. AB-55 (Sub-No. 659X) (STB served August 25, 2005). Acquisition of the Line under the Board's offer of financial assistance provisions was authorized in *CSX Transportation, Inc.-Abandonment Exemption-in Allegany County, MD, In the Matter of an Offer of Financial Assistance*, STB Docket No. AB-55 (Sub-No. 659X) (STB served December 14, 2005). Mr. Altizer was a principal in that group.

The financing that WMS LLC had originally sought in connection with this transaction failed to materialize and its promoters turned to an investor named James Riffin. Mr. Riffin agreed to furnish funds for the purchase of the Line in exchange for a

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owners of both Eighteen Thirty and Georges Creek, are filing a Notice of Exemption under 49 CFR 1180.2(d)(2) for continuance-in-control of these two entities. That notice is docketed as STB Finance Docket No. 35436.

98% interest in WMS LLC. Subsequently, Mr. Riffin arranged for the ownership of that rail line to be transferred from WMS LLC to himself under the corporate affiliate transfer provisions of 49 CFR 1152.27(i). *CSX Transportation -Abandonment Exemption- Allegany County, MD*, STB Docket No. AB-55 (Sub-No. 659X) (STB served August 18, 2006).

During the time between that decision and the present, Gerald Altizer severed his business relationship with Riffin and recently obtained substantial financing for railroad acquisitions from his new business partner Duncan Smith, Mr. Riffin failed to restore the Line to active service and eventually filed for personal bankruptcy under Chapter 7 of the United States Bankruptcy Code, and Mssrs. Smith and Altizer established Eighteen Thirty to pursue short line railroad acquisition opportunities. Georges Creek has been actively soliciting customers to use the Line once it is restored to service. Most recently, Eighteen Thirty executed an agreement with bankruptcy trustee Mark Friedman for purchase of the Line. Once that agreement is approved by the Bankruptcy Court and the Notice takes effect, Eighteen Thirty intends to take ownership of the Line and plans to restore it to operating condition for resumption of common carrier rail service by Georges Creek.

### ARGUMENT

Eighteen Thirty requests the Board to grant an exemption from the requirement that

No purchaser of a line or portion of line sold under this section may transfer or discontinue service on such line prior to the end of the second year after consummation of the sale, **nor may such purchaser transfer such line, except to the rail carrier from whom it was purchased, prior to the end of the fifth year after consummation of the sale.** [Emphasis added]. 49 U.S.C. §10904(f)(4)(A).

Without an exemption, Eighteen Thirty would not be able to acquire the Line until July 10, 2011. However, Board policy favoring the preservation and/or restoration of rail service wherever possible as well as practical considerations here warrant a grant of this exemption.

In support of its request, the Eighteen Thirty notes that the five year restriction appears to expire on or about July 10, 2011, five years after the date CSXT issued the deed. CSXT has notified the Board that it will not exercise its statutory right to acquire the Line. The Trustee is anxious to dispose of this property and wind up the bankruptcy expeditiously. Eighteen Thirty is anxious to acquire the Line because there are potential customers who would like service restored sooner than later. By granting the exemption sought by Eighteen Thirty, the Board will allow the transaction to go forward, once the bankruptcy court grants approval.

Accordingly, Petitioner believes that its request is appropriate for exemption from the formal requirements of §10904(f)(4)(A). Section 10502 directs the Board to grant an exemption from regulation if it finds that (1) regulation is not necessary to carry out the transportation policy of §10101(a) and (2) either (a) the transaction or service is of limited scope, or (b) the application of a provision of this subtitle is not needed to protect

shippers from the abuse of market power. Indeed, the legislative history behind §10505 (the predecessor section to the current §10502) makes clear Congress' intent that the Interstate Commerce Commission (and now the Board) use its exemption authority liberally to free certain transactions and services from the administrative and financial costs associated with continued regulation.

In discussing the exemption powers of the Board's predecessor -- the ICC -- the Staggers Act legislative history states:

The policy underlying this provision is that while Congress has been able to identify broad areas of Commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemptions from remaining regulation.

H.R. Rep. No. 96-1430, 96th Cong. 2d Sess. 105 (1980); *see also, Exemption from Regulation--Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), vacated and remanded on other grounds, *Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir. 1984). This statement applies equally to the Board as the ICC's successor.

Exemption of the proposed transaction from §10904(f)(4)(A) is exactly the type of transaction Congress contemplated when it enacted §10502. Granting this Petition would facilitate the ICCTA's goals of minimizing federal control over transportation and reducing regulatory barriers to entry under §10101a (2) and (7) by allowing Eighteen Thirty to acquire the Line and restore it to service using the expedited class exemption at

49 CFR 1150.31. A grant is also consistent with several other goals of the rail transportation policy including those of §10101a(4) which ensures the development and continuation of a sound rail transportation system with effective competition between rail carriers and other modes and those of §10101a(14) which encourages and promotes energy conservation. Granting this exemption will allow Eighteen Thirty's operator, Georges Creek, to handle freight from customers that would otherwise be dependent upon truck transportation and to attract new industries in an economically depressed area of western Maryland thereby generating jobs and tax revenues. Granting Eighteen Thirty's Petition will further the Board's oft-expressed policy of preserving rail service for which there is a public need. As the Board has held, "we are mindful of Congress' intent, as expressed in many statutory provisions that lines be kept within the rail system where possible." Norfolk Southern Railway Company-Adverse Abandonment-St. Joseph County, MI, STB Docket No. AB-290 Sub-No. 286, STB served February 14, 2008, slip op. at 5-6 and note 15 (a denial of an adverse abandonment application opposed by a new short line railroad on account of potential new traffic); and BNSF Railway Company-Abandonment Exemption -in King County, WA, STB Docket No. AB-6 (Sub-No. 465X, STB served November 28, 2008, slip op. at 3-4(denying an exemption from the offer of financial assistance provisions in the abandonment proceeding where the line has the potential to handle new traffic).

Moreover, requiring Eighteen Thirty to wait until the lapse of the five-year period

next summer before acquiring the line would not advance any of the numerous policy goals of the ICCTA. Additionally, it would needlessly delay and complicate the resolution of the Riffin bankruptcy proceeding.

The Board, and the ICC before it, has interpreted their exemption powers in the context of abandonment proceedings to preserve rail service when it perceives a public need for the service. *Almono LP-Abandonment Exemption-In Allegany County, PA*, STB Docket No. AB-842X, STB served Jan. 13, 2004, 2003 STB Lexis 864.

Similarly, granting Eighteen Thirty's request also satisfies the limited scope test of the §10502. The total length of the track involved is only 8.54 miles in one county in the State of Maryland. The fact that the Line would restore service to about 10 initial customers generating about 450-500 cars per year of freight shows that this Line meets the statutory limited scope test.

Restoring service on the Line will not result in an abuse of market power. Currently there is no rail service. Restoring the Line will provide rail service. Moreover, the shippers using rail service have only had one railroad available in the past. Those shippers in business today who would use the Line are currently using competitive transportation services since rail service is not being offered over the Line.

#### EXPEDITED HANDLING REQUESTED

The Trustee has requested a hearing before the bankruptcy court and believes that he will receive a ruling from the court within about 60 days. In order to coincide with the



order of the bankruptcy court and to expedite the return of the Line to service, Eighteen Thirty respectfully requests the Board to expeditiously grant the instant petition.

### CONCLUSION

Eighteen Thirty respectfully requests the Board expeditiously grant this petition for an exemption from the restrictions of 49 U.S.C. §10904(f)(4)(A) that limit the transfer to a third party of a line acquired under the offer of financial assistance provisions to enable it to acquire and restore to operation this out of service rail line.

Submitted By:



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Counsel for Petitioner

Dated: October 14, 2010

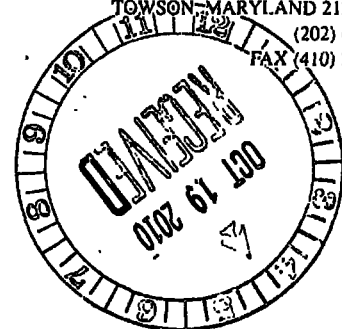
## EXHIBIT A

LAW OFFICES OF  
LOUIS E. GITOMER

LOUIS E. GITOMER  
LOU\_GITOMER@VERIZON.NET

October 18, 2010

THE ADAMS. BUILDING. SUITE 301  
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TOWSON, MARYLAND 21204-4022  
(202) 466-6532  
FAX (410) 332-0885



Ms. Cynthia T. Brown  
Chief of the Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D. C. 20423

Re: **Docket No. AB-55 (Sub-No. 659X), CSX Transportation, Inc.-Abandonment  
Exemption-in Allegany County, MD**

Dear Ms. Brown:

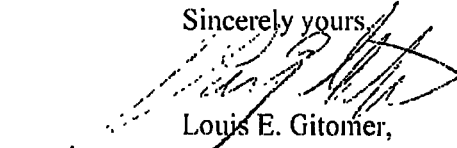
CSX Transportation, Inc. ("CSXT") was authorized to abandon an 8.54-mile railroad line between Morrison, MD, milepost BAI 27.0, and Carlos, MD, at the end of the line, milepost BAI 18.46, all in Allegany County, MD ("the Line") in *CSX Transportation, Inc.-Abandonment Exemption-in Allegany County, MD*, STB Docket No. AB-55 (Sub-No. 659X) (STB served August 25, 2005). The acquisition of the Line from CSXT under the Surface Transportation Board's ("Board") offer of financial assistance provisions was authorized in *CSX Transportation, Inc.-Abandonment Exemption-in Allegany County, MD, In the Matter of an Offer of Financial Assistance*, STB Docket No. AB-55 (Sub-No. 659X) (STB served December 14, 2005).

Pursuant to 49 U.S.C. 10904(f)(4)(A):

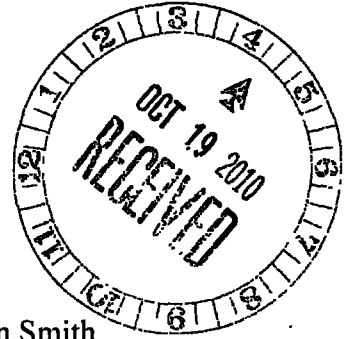
No purchaser of a line or portion of line sold under this section may transfer or discontinue service on such line prior to the end of the second year after consummation of the sale, **nor may such purchaser transfer such line, except to the rail carrier from whom it was purchased, prior to the end of the fifth year after consummation of the sale.** (emphasis added)

CSXT issued a deed on July 10, 2006. Under section 10904(f)(4)(A), CSXT is the only entity that the line could be transferred to prior to July 10, 2011. CSXT does not desire to exercise its statutory right to acquire the Line and waives its statutory right to acquire the Line. CSXT does not object to the acquisition of the Line by Eighteen Thirty Group, LLC, subject to any necessary authorization.

Sincerely yours,

  
Louis E. Gitomer,  
Attorney for CSX Transportation, Inc.

ORIGINAL



CERTIFICATE OF SERVICE

I, John D. Heffner, hereby certify that a copy of FD. No. 35436, Duncan Smith and Gerald Altizer – Continuance-in-Control – Eighteen Thirty Group, LLC and Georges Creek Railway, LLC; Finance Docket No. 35437, Georges Creek Railway, LLC – Operation Exemption-Line of Railroad in Allegany County, MD; Finance Docket No. 35438, Eighteen Thirty Group, LLC – Acquisition Exemption-Line of Railroad in Allegany County, MD; Docket No. AB-55 (Sub-No. 659X), CSX Transportation, Inc.- Abandonment Exemption-In Allegany County, MD, Petition For Exemption From 49 U.S.C. 1904(f)(4)(A), dated October 19, 2010, were sent by first-class United States mail, to:

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John D. Heffner

Dated: October 19, 2010